IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NOs.21401, 23249, 23250 &

23251 OF 2004

In W.P.No.21401 of 2004:

Between:

S. Ram Prasad Reddy S/o Subbarami Reddy
R/o 4/615, Super Bazar road, Proddatur, Cuddapah District

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction South Central Railway, Secunderabad
2 The Chief General Engineer, Construction South Central Railway, Head Quarters Office, Works Branch, Secunderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction, declaring the action of the respondents in withholding seigniorage charges on the ordinary earth pursuant to Letter No. W.44/BVDIV dated 25-6-2004 from his bills in respect of contract agreement No. 209/CA0/C/SC/2004, dated 5-11-2004 entered with the respondents as illegal and arbitrary and without validity of law and consequently direct the respondents not to recover or withhold seigniorage charges from the bills payable to the petitioner.

Counsel for the Petitioner : MR. N.SUBBA RAO

Counsel for the Respondents : MR.C.V.VINITHA REDDY

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IN WRIT PETITION NO : 23249 of 2004

Between:

A.B. Nagireddy S/o Venkatareddy
Mylavaram Mandal, Cuddapah District

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch, Secunderabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, order or direction, declaring the action of the respondents in withholding seigniorage chars on the ordinary earth percent to letter NOW. 44/B Vol. IV dated 25-6-2004 from my bills in respect of Contract Agreement No. 89/CAO/C/Sc/2004, dated 14-5-2004 entered with the respondents as illegal and arbitrary and without validity of law and consequently direct the respondents to refund the seigniorage charges deducted from the bills payable to me together with interest and pass such other of further orders as redeemed fit and proper.

Counsel for the Petitioner : MR. N.SUBBA RAO

Counsel for the Respondent : MR. G.S. Sanghi

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IN WRIT PETITION NO : 23250 of 2004

Between:

A.B. Nagireddy, S/o Venkatareddy,
Dhannawada Village, Mylavaram Mandal, Cuddapah District.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction, South Central Railway, Secunderabad.
2 The Chief General Manager, Construction, South Central Railway, Head Quarters, Works Branch, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, declaring the action of the respondents in withholding seigniorage chars on the ordinary earth percent to letter No. W.44/B Vol.IV dated 25-6-2004 from petitioners bills in respect of Contract Agreement No. 90/CAO/C/SC/2004, dated 14-5-2004 entered with the respondents as illegal and arbitrary and without validity of law and consequently direct the respondents to refund the seigniorage charges deducted from the bills payable to the petitioner together with interest and pass such other or further orders.

Counsel for the Petitioner : MR. N.SUBBA RAO

Counsel for the Respondents: MR. G.S. Sanghi

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In WRIT PETITION NO : 23251 of 2004

Between:

K.Narasimhareddy S/o.Krishna reddy
Khairatabad, Hyderabad.

..... PETITIONER

AND

1 The Chief Administrative Officer, Construction South Central Railway, Secunderazbad.
2 The Chief General Manager, Construction South Central Railway, Head Quarters, Works Branch, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of mandamus or any other appropriate writ, order or direction, declaring the action of the respondents in withholding seigniorage chars on the ordinary earth percent to letter No W 44/B Vol.IV Dt.25.6.2004 from my bills in respect of Contract Agreement No.115/CAO/C/SC/2004, dt.17.6.2004 entered with the respondents as illegal and arbitrary and without validity of law and consequently direct the respondents not to recover or withhold seigniorage charges from the bills payable tome and pass such other or further orders.

Counsel for the Petitioner : MR. N.SUBBA RAO

Counsel for the Respondents : MR. G.S. Sanghi

The Court made the following common order :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NOs.21401, 23249, 23250 &

23251 OF 2004

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COMMON ORDER :

Since a common question with regard to the entitlement of the respondents to recover seigniorage charges on ordinary earth from the bills payable to the petitioners / contractors arise for consideration, all these writ petitions are heard together and decided by this common order.

The petitioners in these writ petitions claim to be the registered contractors executing several works in various departments of the State and Central Governments including Railways. Pursuant to tender notices issued by the respondents inviting tenders for construction of new Broad Gauge Lines between different places, the petitioners submitted their tenders. In pursuance thereof, the petitioners in all these writ petitions were awarded the works and agreements were executed in their favour on 5-11-2004, 14-05-2004, 14-05-2004 and 17-6-2004 respectively. Thereafter, the petitioners commenced the execution of the works and

at the time of the payment of the first bills, they were informed by the 1st respondent that as per the letter of the 2nd respondent dated 25-06-2004 the seigniorage charges on ordinary earth have to be deducted from the bills submitted by them. The petitioners submitted their representations along with similarly situated contractors stating that the agreements entered into between the parties do not contain a clause for deduction of seigniorage charges on ordinary earth and that the letter of the 2nd respondent dated 25-06-2004 directing deduction of seigniorage charges cannot be made applicable to the petitioners since the same was not incorporated under the terms of the agreements. However, the respondents refused to consider the said representations and have been proceeding to withhold the seigniorage charges on the ordinary earth from the bills submitted by the petitioners. Hence, these two writ petitions seeking a declaration that the action of the respondents is arbitrary and illegal and for a consequential direction not to recover or withhold seigniorage charges from the bills payable to the petitioners.

On behalf of the respondents, counter-affidavits have been filed stating that as per clause 18.2 of the agreed terms of the contract, the seigniorage charges as fixed by the Government of A.P. as revised from time to time are liable to be deducted. It is also stated that the rates quoted by the petitioners in pursuance of the tender notice dated 27-10-2003 or inclusive of the seigniorage charges and therefore the respondents are entitled to deduct the same from the bills submitted by the petitioners. It is also contended that by virtue of the arbitration clause provided under clauses 63 & 64 of the General Conditions of the Agreement, an alternative remedy is available to the petitioners and therefore the writ petitions are not maintainable and are liable to be dismissed in limine.

I have heard the learned Counsel for the petitioners, the learned Standing Counsel appearing for the respondents and perused the material on record.

It is to be noted that as per sub-Rule (1) of Rule 10 of the A.P. Minor Mineral Concession Rules, 1966 as amended under G.O.Ms.No.331, Industries & Commerce (MI) Department, dated 21-6-2000, where a quarry lease is granted under the said Rules, seigniorage fee or dead rent whichever is higher, shall be charged on all minor minerals despatched or consumed from the land at the rate

specified in Schedule-I and Schedule-II as the case may be. Though ordinary earth was not included in the said Schedules, by virtue of a subsequent amendment under G.O.Ms.No.466, Industries & Commerce (MI) Department, dated 24-08-2000 the ordinary earth was inserted in Item No.8 of Schedule-I. Consequently, it is not in dispute that seigniorage fee is chargeable in respect of ordinary earth also at the rates specified in Schedule i.e., Rs.13/- per cmt.

It is also not in dispute that the agreements in question were executed in favour of the petitioners herein long after the abovesaid amendment and the agreements contain a clause as under :

> *"18.2. Seigniorage charges as fixed by the Government of Andhra Pradesh and payable to them as revised from time to time during the currency of contract will be recovered by Railway from the Contractor's on account and final bills and remitted to Government of A.P. The rate quoted by the tenderer shall be inclusive of these charges. Claim regarding revision of seigniorage charges and consequently enhancement of the accepted rate will not be entertained."*

The learned Standing Counsel appearing for the respondents, while relying upon the abovesaid clause, vehemently contended that the rates quoted by the petitioners shall be inclusive of the seigniorage charges on ordinary earth and therefore the respondents are justified in seeking to withhold the seigniorage charges on the ordinary earth from the bills of the petitioners so as to pay the same to the State Government.

On the other hand, the contention of the petitioners is that the agreements in question have not specifically provided for payment of seigniorage charges by the contractors on ordinary earth and that as a matter of fact the estimate rate of Rs.50/- per Cum was fixed by the respondent Railways without taking into consideration the seigniorage charges on ordinary earth. Hence, according to the petitioners, the seigniorage charges cannot be deducted under the agreements in question.

The learned Counsel for the petitioners submits that the estimates were prepared by the respondent Railways in the year 1990 without taking into consideration the payment of seigniorage charges and particularly since there is no specific clause under the agreements for recovery of seigniorage charges on ordinary earth, all the contractors made representations requesting the respondents not to implement the instructions under the letter dated 25-06-2004 insofar as existing contracts are concerned.

The learned Counsel for the petitioners across the Bar states that the requests of the petitioners and other similarly situated contractors have been considered favourably by the respondents and a decision has been taken not to recover seigniorage charges if there is no such specific clause in the agreements. The learned Counsel has placed before this Court a copy of the letter of the Chief General Engineer, South Central Railway, Works Branch, Secunderabad bearing No.W.44/B/Vol.V, dated 15-12-2004 which runs as under :

> *"In view of the instructions issued vide above cited letter, lot of contractors' representations have been received and some of the contractors have approached the courts praying not to recover the seigniorage charges when there is no specific provision exist in the agreements for recovery of such charges. In order to sort out this issue, a critical review has been made and it has been decided to implement the following instructions :*
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> *(1) In supersession of this office letter quoted above, it is clarified that in case of works, wherever a specific clause for recovery of seigniorage charges by Railway from the contractor's on account bills on supply of earth / mooram etc., is provided in the agreement, recovery has to be ensured and the recovered amount has to be remitted to the State Government. However in case of agreements where no specific clause is provided for recovery of seigniorage charges by Railways from the contractor's on account bills, the same is not required to be recovered from the contractor's bills. But all details may be given to State Government on demand so that, if required, State Government can recover the seigniorage charges directly from the contractors.*
>
> *(2) For all future tenders and contracts, necessary action should be taken to incorporate the following condition / clause.*

"Seigniorage charges for supply of earth, mooram, sand and other minerals as fixed by the State Government and payable to them as revised from time to time during the currency of contract will be recovered by Railway from the contractors on account and final bills and remitted to the State Government. The rates quoted by the tenderer shall be inclusive of these charges. Claims regarding revision of seigniorage charges and consequent enhancement of the accepted rate will not be entertained."

The above instructions should be followed with immediate effect."

The learned Counsel submits that under similar circumstances, a Division Bench of this Court in W.P.No.3427 of 2003 while considering an identical question, having taken note of a communication from the Secretary to Government, Irrigation Department, in which it was stated that the seigniorage charges may not be recovered from the contractors if a clause towards recovery of seigniorage charges has not been covered under the agreement, allowed the writ petition and directed the respondents therein not to collect any seigniorage charges on ordinary earth.

Having regard to the submissions made by both the parties and in the light of the material on record particularly the letter dated 15-12-2004, extracted above, it is clear that the respondents having considered the request of the contractors, have decided not to recover the seigniorage charges from the contractor's on account bills in case there is no specific clause for recovery of seigniorage charges on supply of earth or mooram etc. They have also made it clear that for all future tenders or contracts, the specific clause to that effect shall be incorporated. By virtue of the said letter, the earlier letter dated 25-06-2004 under which instructions were issued to deduct the seigniorage charges from the bills of the contractors stood superseded.

In the cases on hand, as already expressed above, the only clause available with regard to payment of seigniorage charges is clause 18.2. However, the said clause is general in nature and does not specifically provide for payment of seigniorage charges on *"ordinary earth"*. Therefore, in the light of the decision taken by the respondents under the letter dated 15-12-2004, I am of the view that the

seigniorage charges on *"ordinary earth"* in respect of the works entrusted to the petitioners under the respective agreements cannot be recovered. Accordingly, the Writ Petitions are disposed of directing the respondents not to withhold any seigniorage charges on ordinary earth from the on account and final bills of the petitioners in respect of the works entrusted to them under the Agreements in question. However, if the amounts are already deducted, it is for the petitioners to work out the appropriate remedy for refund of the same. It is also made clear that this shall not preclude the State Government to recover the seigniorage charges directly from the petitioners, in case any such decision is taken, following due process of law.

All the Writ Petitions are accordingly disposed of. No costs.

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23rd March, 2005.

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To

1 The Chief Administrative Officer, Construction South Central Railway, Secunderabad
2 The Chief General Engineer, Construction South Central Railway, Head Quarters Office, Works Branch, Secunderabad.

3. Two CD copies.